

December 6, 1996

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR OSD Case No. 96-0188

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Martin H. Mogul, Esquire *Pro Se*

Department Counsel

STATEMENT OF THE CASE

On March 20, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued the attached Statement of Reasons (SOR) to ----- (Applicant), which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 12, 1996. The case was assigned to the undersigned on May 28, 1996, and a Notice of Hearing was issued on June 4, 1996.

A hearing was held on September 6, 1996, at which the Government presented eight documentary exhibits. The Applicant presented one documentary exhibit and he testified on his own behalf.

The official transcript was received on September 16, 1996.

FINDINGS OF FACT

The Applicant is 39 years old. He is employed as a Deckhand on a Tugboat for a defense contractor, and he seeks to obtain a Secret-Level security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Criterion H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal substances.

The Applicant admits to abusing a variety of illegal drugs beginning in the early 1980s and continuing until at least January 1995. The Applicant's drug of choice was crystal methamphetamine which he used on a weekly basis and became addicted to during the fifteen year period he was using it. The Applicant stated that he used crystal methamphetamine for only recreational purposes, and usually snorted it on the weekends. He never used it while at work. The Applicant stated that from 1993 to 1995, he purchased crystal methamphetamine more than 100 times, however, he never sold it.

On January 7, 1995, and January 11, 1995, through March 7, 1995, the Applicant received treatment from a Mental Health Center where he was diagnosed with "Substance Induced Psychotic Disorder." The reason for his treatment was to determine why he was experiencing auditory hallucinations, (hearing voices when no one was around). His doctor explained to him that his condition was a chemical imbalance brought on by his past crystal methamphetamine use. After several weeks of treatment, the voices gradually dissipated and have now completely disappeared. The Applicant was referred to drug treatment, however, instead of attending he decided to quit using crystal methamphetamine on his own. (Tr. Pgs. 36-39 and Government Exhibit 7). The Applicant has recently, however, started the paperwork necessary in order to receive counseling through the veterans assistance program.

From 1970 until sometime in 1994, the Applicant used marijuana on various occasions. He also purchased marijuana in small amounts for his own use during this period.

From 1970 to 1980 or 1981, the Applicant used speed in the pill form during junior high and high school. The Applicant stated that he considers speed and methamphetamine to be the same drug. The Applicant stated that he has not used speed in the pill form since high school.

During the early 1980s, the Applicant also used and purchased cocaine on various occasions.

The Applicant has not used any illegal drug since January 1995, and has no intentions of using, selling or purchasing any illegal drug in the future.

Paragraph 2 (Criterion E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On February 21, 1995, the Applicant completed an application for security clearance which required him to indicate whether he has ever used any illegal drug, and whether he has ever purchased or sold any illegal drug. The Applicant responded "no" to both questions. (Government Exhibit 1, Questions 20(a) and 20(b). These were false answers to material questions pertaining to the Applicant's former involvement with illegal substances. The Applicant stated that he falsified the application because he was in fear that he might not obtain his security clearance, and might ultimately lose his job. (Tr. pg. 44).

In a signed sworn statement to the Defense Investigative Service on October 19, 1995, the Applicant stated that he experimented with and purchased crystal methamphetamine for one month in November 1993, and denied any other

illegal drug use. (Government Exhibit 4). These were false statements to material questions pertaining to the Applicant's true involvement with illegal drugs. The Applicant stated that he was not honest in his sworn statement for the same reasons he falsified his security clearance application, for fear that he might not obtain his security clearance, and might ultimately lose his job. (Tr. Pg. 45).

On January 12, 1996, the Applicant was interviewed again by the Defense Investigative Service. During this interview the Applicant stated that he last used crystal methamphetamine in January 1995. There is no evidence in the record to support the Government's allegation that the Applicant provided false information during this interview. Accordingly, I find for the Applicant concerning allegation 2(c) of the SOR.

Paragraph 3 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he violated both a state and federal criminal statute.

As found above, the Applicant knowingly and wilfully provided false material information to DOD during the clearance screening process. In so doing, the Applicant violated Title 18, United States Code, Section 1001, a felony.

The Applicant failed to file his State Income Tax Returns for tax year 1983, 1984, 1986, 1987, 1990, 1991, 1992, 1993 and 1994 in violation of the States Revenue and Tax Code, which is a misdemeanor. (Government Exhibit 5). The Applicant also failed to file his Federal Income Tax Returns for tax years 1992, 1993 and 1994 in violation of Title 26, United States Code, Section 7203, which is a misdemeanor. The Applicant acknowledges his responsibility to file both state and federal tax returns and attributes his failure to file his returns on being completely and totally irresponsible. The Applicant also stated that because he did not have the money to pay the taxes owed he did not file his tax returns. (Government Exhibit 4). He further stated that he has made no attempt to contact the taxing authorities to discuss his financial problems. At the time of the hearing the Applicant still had not filed any of the tax returns in question.

On July 7, 1989, the Applicant was cited for No Drivers License In Possession, Driving with a bad tire, no proof of insurance and an expired registration. The Applicant failed to appear in court and a warrant was issued for his arrest. On October 9, 1990, the Applicant was cited for No Drivers License In Possession. Again he failed to appear in court, and another warrant was issued for his arrest on December 4, 1990. Sometime last year the Applicant satisfied the fines on both warrants and reinstated his Drivers License.

Paragraph 4 (Criterion F- Financial Considerations). The Government alleges that the Applicant is ineligible for clearance because he has been financially irresponsible.

The Applicant admits to being indebted to each of the creditors listed in the SOR. The total debt is an amount in excess of \$17,000.00. The Applicant testified that he has not had the money to pay these debts since his wages have been under garnishment by the State Franchise Tax Board. The Applicant has made no effort to contact his creditors to arrange a payment plan. At the time of the hearing each debt listed in the SOR was still outstanding.

Subparagraph 4(a) The Applicant is indebted to a creditor in the amount of \$151.00. This debt remains outstanding, and the Applicant has made no effort to pay this bill since October 1995.

Subparagraph 4(b) The Applicant is indebted to another creditor in the amount of \$89.00. This debt remains outstanding, and the Applicant has made no effort to pay this bill since October 1995.

Subparagraph 4(c) The Applicant is indebted to the State Franchise Tax Board approximately \$1,227.54 for back taxes owed for tax year 1990. This debt remains outstanding, and the Applicant has made no effort to pay this bill since October 1995.

Subparagraph 4(d) The Applicant is indebted to a third creditor in the amount of \$80.00. This debt remains outstanding, and the Applicant has made no effort to pay this bill since October 1995.

Subparagraph 4(e) The Applicant is indebted to a fourth creditor in the amount of \$115.00 . This debt remains outstanding, and the Applicant has made no effort to pay this bill since October 1995.

Subparagraph 4(f) The Applicant is indebted to the ----- in the amount of \$9,679.23, for a defaulted student loan. This debt remains outstanding, and the Applicant has made no effort to pay this bill since October 1995.

Subparagraph 4(g) In June 1994, a judgment for child support was entered against the Applicant at the rate of \$375.00 per month, in the amount of \$6,000.00. This debt remains outstanding, and the Applicant has made no effort to pay this bill since October 1995.

Subparagraph 4(h) The Applicant is indebted to a fifth creditor in the amount of \$340.00. This debt remains outstanding, and the Applicant has made no effort to pay this bill since October 1995.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Criterion H (Drug Involvement)

Conditions that could raise a security concern:

- (1) any drug abuse;
- (2) illegal drug possession, including cultivation, proceeding, manufacture, purchase , sale or distribution.

Conditions that could mitigate security concerns:

None.

Criterion E (Personal Conduct)

Condition that could raise a security concern:

- (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

Criterion J (Criminal Conduct)

Conditions that could raise a security concern:

- (1) any criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses

Condition that could mitigate security concerns:

None.

Criterion F (Financial Considerations)

Conditions that could raise a security concern:

(1) a history of not meeting financial obligations:

(3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

None.

In addition, as set forth in Enclosure 2 of the Directive at page 2-1, "In evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility criteria established in the DOD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In DOHA cases the Government has the initial burden to go forward with prima facie evidence in support of the factual and conclusionary allegations in the SOR. If the Government meets this initial obligation, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or

outweigh the Government's prima facie

case.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in repeated instances of off-duty drug abuse, serious dishonesty, criminal conduct and financial irresponsibility which demonstrates poor judgment or unreliability on the Applicant's part.

Furthermore, the Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an Applicant has demonstrated a lack of respect for the law in his private affairs, then there exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

In this case the Government has met its initial burden of proving by prima facie evidence that the Applicant has used illegal drugs (Criterion H); that he falsified a security clearance questionnaire and a sworn statement by concealing material information concerning the extent of his illegal drug use (Criterion E); that he has engaged in criminal conduct (Criterion J); and that he has been financially irresponsible (Criterion F).

The record evidence shows that the Applicant clearly disrespects the law by using and purchasing crystal methamphetamine, marijuana, cocaine and speed from the early 1980s until January 1995. And, as a result of his illegal drug abuse, he became addicted to crystal methamphetamine. The Applicant's last use of crystal methamphetamine was in January 1995, only twenty two months ago. The Applicant is commended for his recent efforts to completely abstain from illegal drugs. However, given the fact that the Applicant is battling a strong addiction to crystal methamphetamine, and has only been drug-free for less than two years, there has not been sufficient time in rehabilitation to show that the Applicant will not return to his old ways. This does not, however, preclude the Applicant from applying for a security clearance at some future date when there is additional evidence to support his full rehabilitation. Accordingly, I find against the Applicant under Criterion H, (Drug Involvement).

The Applicant failed to disclose his illegal drug use on his security application and concealed the true extent of his drug involvement in a sworn statement to the Defense Investigative Service. This conduct is clearly a violation of Title 18, United States Code, Section 1001. Furthermore, he did not come forward to correct the falsification. Instead, he was interviewed a number of times before he confessed to his crystal methamphetamine addiction. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about the material aspects of his or her personal background. In this case, the Applicant obviously knew he had not been honest when he provided false information to the Government and did not have the integrity to come forward to tell the truth until he was backed into a corner by the Defense Department.

In addition, the Applicant has intentionally and without reasonable excuse failed to file his state and federal income tax returns for many years in violation of both state and federal statutes cited above. This conduct shows poor judgment, unreliability and untrustworthiness. Accordingly, the Applicant has failed to meet his ultimate burden of persuasion under Criterion E, (Personal Conduct) and Criterion J, (Criminal Conduct).

The Applicant has failed to pay his past due debts, and has offered little, if any, evidence to demonstrate a changed lifestyle. There has been absolutely no effort on the part of the Applicant to arrange any type of payment plan or even discuss his financial problems with his creditors. Instead he has simply ignored his creditors. Under the circumstances, the Applicant cannot be deemed to be sufficiently rehabilitated in the area of his personal finances to warrant granting his security clearance request. Accordingly, I find against the Applicant under Criterion F, (Financial Considerations).

On balance, it is concluded that the Applicant has not overcome the Government's prima facie case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 3 and 4 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g. Against the Applicant.

Subpara. 1.h. Against the Applicant.

Subpara. 1.i. Against the Applicant.

Subpara. 1.j Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: For the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.

Subpara 3.d.: Against the Applicant.

Subpara. 3.e.: Against the Applicant.

Subpara. 3.f.: Against the Applicant.

Subpara. 3.g.: Against the Applicant.

Subpara. 3.h.: Against the Applicant.

Subpara. 3.i.: Against the Applicant.

Subpara. 3.j.: Against the Applicant.

Subpara. 3.k.: Against the Applicant.

Subpara. 3.l.: Against the Applicant.

Subpara. 3.m.: Against the Applicant.

Subpara. 3.n.: Against the Applicant.

Subpara. 3.o.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subpara. 4.a.: Against the Applicant.

Subpara. 4.b.: Against the Applicant.

Subpara. 4.c.: Against the Applicant.

Subpara. 4.d.: Against the Applicant.

Subpara. 4.e.: Against the Applicant.

Subpara. 4.f.: Against the Applicant.

Subpara. 4.g.: Against the Applicant.

Subpara. 4.h.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge